08-1467 (2)

Supreme Court, U.S.
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In The
Supreme Court of the United States

NICOLAS CARRANZA,
Petitioner,

v.

ANA CHAVEZ, CECILIA SANTOS, JOSE CALDERON, ERLINDA FRANCO, and DANIEL ALVARADO,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF *AMICUS CURIAE* REPUBLIC OF EL SALVADOR IN SUPPORT OF PETITIONER

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Amicus Curiae of El Salvador respectfully submits this brief in support of Petitioner Nicolas Carranza.[1]

INTEREST OF *AMICUS CURIAE*

The Government of the Republic of El Salvador seeks to have this Court reverse the decision of the United States Court of Appeals for the Sixth Circuit. The decision of the Sixth Circuit to affirm the decision of the United States District Court for the Western District of Tennessee to adjudicate the claims of Respondents, derogates El Salvador's Law of General Amnesty for the Consolidation of Peace, Legislative Decree No. 486, March 20, 1993 ("Amnesty Law"). The Amnesty Law precludes the claims at bar by granting civil and criminal immunity to Petitioner Nicolas Carranza, a former Sub Minister of the Salvadoran Ministry of Defense and Director of the Treasury Police, accused of committing abuses during El Salvador's civil war. The Sixth Circuit's decision transgresses thereby the sovereignty of El Salvador and the will of its people.

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[1] No counsel for a party authored this brief in whole or in part. No person or entity other than the Republic of El Salvador or its counsel has made a monetary contribution to the preparation or submission of this brief. Counsel for all parties consented in writing to the filing of this brief.

SUMMARY OF ARGUMENT

The decision of the Sixth Circuit impugns El Salvador's sovereignty, contradicts international authority, and undermines El Salvador's democracy.

ARGUMENT

INTRODUCTION

The Amnesty Law was a principal, if not the pivotal, requirement of the peace accords which put an end to El Salvador's civil war that lasted from 1980 until 1992.

The peace accords culminated in the Agreement of Chapultepec of January 16, 1992.

Chapter VI, Section 1, of the agreement, "Political Participation of the FMLN," guarantees to the former guerillas the "full exercise of their civil and political rights in order that they be legally reintegrated into the civil, political and institutional life of the country."

This provision led to the passage of the Amnesty Law which grants "full, absolute and unconditional amnesty" to all who participated in the war – on either side – "toward the end of achieving the reconciliation and reunification of the Salvadoran family... " Secs. IV and I of the Amnesty Law.

The United States Department of State has acknowledged the pivotal role of the Amnesty Law

as a prerequisite to the termination of a war that cost El Salvador 70,000 lives. Moreover, the United States, together with the United Nations and several other countries, was heavily invested in the negotiations which led to the passage of the Amnesty Law and the creation of a peace that endures to this day.[2]

1. International authority supports the Amnesty Law.

Protocol Additional to the Geneva Conventions of 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts (1977), calls for amnesties that enable a transition from civil war to peace. "[A]t the end of hostilities, the authorities in power shall endeavor to grant the broadest possible amnesty to persons who have participated in the armed conflict..." *Id.* at Art. 6(5).

2. The courts of El Salvador are a suitable forum.

Respondents are not absolutely precluded from securing relief in El Salvador. The Supreme

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[2] The casualty figure and the characterization of the amnesty are drawn, respectively, from two publications of the State Department, *Fifteenth Anniversary of the Peace Accords*, Press Statement, January 16, 2007, *available at* http://2001-2009.state.gov/r/pa/prs/ps/2007/78920.htm, and *El Salvador Called Example to World for Healing Wounds of War*, Bureau of International Information Programs, USINFO, January 22, 2007, *available at* http://www.america.gov/st/washfileenglish/2007/January/20070122176141XEneerG0.3538782.html. *Amicus* requests the Court take judicial notice of both official publications pursuant to Fed. R. Evid. 201.

Court of El Salvador has specifically inferred the discretion of Salvadoran courts to waive the immunity of the Amnesty Law in particular cases involving "fundamental human rights." Cases 24-97 and 21-98, Sup. Ct. of El Sal., (Sept. 26, 2000), Sec. VII(2).[3] Rather than seek relief before a Salvadoran court, however, Respondents have sought the more favorable venue of an American court ill equipped to adjudicate events of nearly 30 years ago in Central America. El Salvador, and not the United States, was the locus of the acts alleged, the actors and any harm engendered thereby. Moreover, most of the people able to elucidate those events from first-hand knowledge are beyond the reach of American courts.

The commitment to justice of the Salvadoran courts is not to be dismissed. It bears noting that the sentences of two guerillas convicted of murdering two United States soldiers during the civil war were vacated following passage of the Amnesty Law. Case No. CPS02495.95, Sup. Ct. of El Sal., (Aug. 16, 1995), pp. 1-2.[4]

The organs of government in El Salvador are demonstrably pluralistic, auguring judicial independence. On March 15, the Salvadoran people

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[3] *Available at* http://www.jurisprudencia.gob.sv/Jindice.htm. Search "constitucional," "inconstitucionalidades," "sentencias definitivas," "2000," and "24-97 ac 21-98." *Amicus* requests the Court take judicial notice of the decision pursuant to Fed. R. Evid. 201.

[4] *Available at* http://www.jurisprudencia.gob.sv/exploiis/.%5Cindice.asp?nBD=1&nDoc=22080&nItem=22082&nModo=1. *Amicus* requests the Court take judicial notice of the decision pursuant to Fed. R. Evid. 201.

elected as President, Mauricio Funes of the FMLN. The party of the former guerillas already comprises the largest of several parties in the Salvadoran Legislature and will control the executive branch after the change of government on June 1.[5]

3. The decision of the Sixth Circuit undermines the political stability and democracy of El Salvador.

The adjudication of Respondents' claims by a court geographically and temporally removed from the events in question and with no stake in El Salvador's continuing political harmony, risks decisions at odds with the facts, the intention of El Salvador's elected legislature and the interests of the Salvadoran people.

CONCLUSION

El Salvador's justice and polity are the concerns, first and foremost, of El Salvador – the locus of the acts alleged, the actors and the repercussions. El Salvador, not the United States, suffered the war that the Amnesty Law ended. Only a Salvadoran court should adjudicate claims that implicate the vehicle of its peace.

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[5] CRS Report RS21655, *El Salvador: Political, Economic, and Social Conditions and U.S. Relations*, "2009 Elections," by Claire Seelke and Peter Meyer, *available at* http://fpc.state.gov/documents/organization/121836.pdf. *Amicus* requests the Court take judicial notice of this official publication pursuant to Fed. R. Evid. 201.

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